

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:
FAIRWAY GROUP HOLDINGS CORP., <i>et al.</i>,	:
	:
Debtors	:
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VILLAGE SUPER MARKET, INC.,	:
WAKEFERN FOOD CORP.,	:
VSM NY HOLDINGS LLC, AND	:
VSM NY DISTRIBUTION LLC,	:
	:
	Plaintiffs,
-against-	:
	:
FAIRWAY BROADWAY LLC,	:
FAIRWAY BAKERY LLC,	:
FAIRWAY DOUGLASTON LLC,	:
FAIRWAY CHELSEA LLC,	:
FAIRWAY EAST 86TH STREET LLC,	:
FAIRWAY GROUP HOLDINGS CORP.,	:
FAIRWAY GROUP ACQUISITION CO.,	:
FAIRWAY GROUP CENTRAL SERVICES LLC,	:
FAIRWAY KIPS BAY LLC,	:
FAIRWAY PELHAM LLC,	:
FAIRWAY PELHAM WINES & SPIRITS LLC,	:
FAIRWAY REDHOOK LLC,	:
FAIRWAY STAMFORD LLC,	:
FAIRWAY UPTOWN LLC, AND	:
FAIRWAY WESTBURY LLC,	:
	:
	Defendants.
	:
	-----x

~~[PROPOSED] TEMPORARY RESTRAINING ORDER AND [JLG] ORDER TO SHOW
CAUSE FOR A PRELIMINARY INJUNCTION~~

Upon the Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction, dated July 30, 2020; Declarations of John J. Sumas and Christopher Lane, dated July 30, 2020 and exhibits appended thereto; and Plaintiffs' Memorandum of Law in Support of Plaintiffs' Application for a Temporary Restraining Order and Preliminary Injunction, dated July 30, 2020, and proceedings had herein with regard to the present application, and it further appearing that the Court, having reviewed and considered the Complaint and pleadings filed in support thereof, ~~Plaintiff is likely to succeed on the merits of its claims; that the temporary restraints sought herein are appropriate to preserve and protect the property of the Plaintiffs; to prevent immediate and irreparable harm; that the public interest favors the relief granted herein; and that the Defendants will not be materially prejudiced hereby; [JLG]~~ and good cause otherwise appearing for the entry of this Order, it is hereby

ORDERED that:

1. ~~Defendants, together with their "related companies" as defined in 15 U.S.C. § 1127, officers, agents, servants and employees and those persons acting in concert with them during the pendency of this action be and hereby are enjoined and restrained from:~~
 - a. ~~Using any of the Seller Marks conveyed in the Asset Purchase Agreement (ECF 449, Ex. A) (the "FAIRWAY mark") or any confusingly similar mark in connection with Defendants' goods or services;~~
 - b. ~~Using or authorizing the use of the FAIRWAY name or mark in connection with any marketing or promotional activity; or~~
 - c. ~~Representing to the public that any of Defendants' goods or services are in any way produced by, manufactured by, distributed by, connected to, or in any way affiliated with Plaintiffs or with the FAIRWAY mark.~~

~~2. No bond is required, as agreed to by the parties in Section 9.11 of the APA.~~

[JLG]

3. Defendants show cause before ~~a motion term~~ of this Court to be held, at the United States Bankruptcy Court in the Southern District of New York, at One Bowling Green, New York, New York 10004, on **August 7, 2020, at 11:00 o'clock in the morning thereof**, why an order should not be issued granting a preliminary injunction that enjoins Defendants;

[JLG]

4. ~~A copy of this Order to Show Cause shall serve and operate in lieu of a summons as to the Complaint, and that a~~ A true copy of this Order to Show Cause, together with the Complaint and other pleadings and papers filed in this action in support thereof, shall be served upon the Defendants by **email and overnight mail next day delivery on or before 5:00 p.m. on July 31, 2020.** ~~within~~ days hereof. Service of said pleadings in the foregoing manner is hereby deemed good and effective service. [JLG]

5. The Defendants shall, not later than ~~August 5, 2020 at 12:00 noon days before the return date of this Order to Show Cause~~, file with the United States Bankruptcy Court for the Southern District of New York **(with 2 single-sided copies delivered by overnight mail to Chambers)** and serve upon Plaintiffs' attorneys, all answering papers to the relief sought in the Order to Show Cause. [JLG]

~~6. The Defendants shall answer or otherwise move with respect to the Complaint within thirty (30) days of service by filing an original answer to the Complaint with the United States Bankruptcy Court for the Southern District of New York and serving same upon Plaintiffs' attorneys, and that the failure to answer or otherwise move as specified herein may~~

~~result in the entry of default and default judgment for some or all of the relief requested in the Complaint.~~

7. ~~The Defendants may move to dissolve the temporary restraints set forth herein on~~
~~____ days written notice to Plaintiff's attorneys at the address listed above.~~ [JLG]

Dated: July 31, 2020
New York, New York

/s/ James L. Garrity, Jr.
Honorable James L. Garrity, Jr.
United States Bankruptcy Judge